



General Assembly

February Session, 2022

***Substitute Bill No. 5220***



***AN ACT CONCERNING OBLIGORS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 36a-262 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective October*  
3 *1, 2022*):

4 (a) Except as otherwise provided in this section, the total direct or  
5 indirect liabilities of any one obligor that are not fully secured, however  
6 incurred, to any Connecticut bank, exclusive of such bank's investment  
7 in the investment securities of such obligor, shall not exceed at the time  
8 incurred fifteen per cent of the equity capital and reserves for loan and  
9 lease losses of such bank. The total direct or indirect liabilities of any one  
10 obligor that are fully secured, however incurred, to any Connecticut  
11 bank, exclusive of such bank's investment in the investment securities  
12 of such obligor, shall not exceed at the time incurred ten per cent of the  
13 equity capital and reserves for loan and lease losses of such bank,  
14 provided this limitation shall be separate from and in addition to the  
15 limitation on liabilities that are not fully secured. Notwithstanding any  
16 provision of this subsection, the limitation on the liabilities of any one  
17 obligor shall take into account the credit exposure to such obligor arising  
18 from a derivative transaction. The commissioner shall have the  
19 authority to establish the method for determining the credit exposure  
20 and the extent to which the credit exposure shall be taken into account.

21 As used in this [subsection,] section, an obligor shall not include any  
22 person who is a guarantor or indemnitor of a direct or indirect liability  
23 when (1) in the case of a liability where the primary obligor is not a  
24 natural person, the bank seeks repayment of any such liability out of the  
25 operations of the business of the primary obligor, (2) the bank relies  
26 primarily on the primary obligor's general credit standing and, in the  
27 case of a liability where the primary obligor is not a natural person, the  
28 forecast of operation of the primary obligor's business, (3) there is no  
29 aspect of the loan that is being made as an exception to the bank's  
30 lending policies, and (4) such guarantor or indemnitor is not an obligor  
31 with respect to such liability pursuant to the direct benefit or common  
32 enterprise tests set forth in subsection (b) of this section. As used in this  
33 subsection, (A) "primary obligor" means a person who is named as a  
34 borrower or debtor, but not a guarantor or indemnitor, in a direct or  
35 indirect liability, (B) "guarantor" means a person who is obligated to pay  
36 a direct or indirect liability when the primary obligor has defaulted on  
37 such liability pursuant to the terms of the liability, (C) "indemnitor"  
38 means a person who becomes obligated to pay a direct or indirect  
39 liability pursuant to an indemnity agreement, and (D) "derivative  
40 transaction" includes any transaction that is a contract, agreement,  
41 swap, warrant, note or option that is based, in whole or in part, on the  
42 value of any interest in, or any quantitative measure or the occurrence  
43 of any event relating to, one or more commodities, securities, currencies,  
44 interest or other rates, indices or other assets. The commissioner may  
45 adopt regulations in accordance with the provisions of chapter 54  
46 establishing the method for determining credit exposure to derivative  
47 transactions and the extent to which the credit exposure shall be taken  
48 into account. For purposes of this section, a liability shall be considered  
49 to be fully secured if it is secured by readily marketable collateral having  
50 a market value, as determined by reliable and continuously available  
51 price quotations, at least equal to the amount of the liability. For  
52 purposes of determining the limitations of this section, in computing the  
53 liabilities of an obligor, a liability is incurred at the time of the closing of  
54 the transaction, unless such closing is preceded by a legally binding  
55 written commitment to enter into the transaction, in which case such

56 liability is incurred at the time of commitment and is net of any liabilities  
 57 of the obligor to such bank that will be paid with the proceeds of the  
 58 commitment at the time of closing. The limitations provided for in this  
 59 subsection may be exceeded for a period of time not to exceed six hours  
 60 if at the closing of any transaction at which such obligor incurs such  
 61 liabilities to a Connecticut bank in excess of such limitations, such bank  
 62 immediately assigns or participates out to one or more other persons an  
 63 amount that constitutes not less than the excess over the applicable  
 64 limitation. Obligations as endorser or guarantor of negotiable or  
 65 nonnegotiable installment consumer paper which carry an agreement to  
 66 repurchase on default, unless the bank's sole recourse is to an agreed  
 67 reserve held by it, in which case the liability shall be excluded, a full  
 68 recourse endorsement or an unconditional guarantee by the person,  
 69 partnership, association or corporation transferring the same, shall be  
 70 subject under this section to a limitation of fifteen per cent of the bank's  
 71 equity capital and reserves for loan and lease losses in addition to the  
 72 applicable limitations of this section with respect to the makers of such  
 73 obligations; provided, upon certification by an officer of the bank  
 74 designated for that purpose by the governing board that the  
 75 responsibility of each maker of such obligations has been evaluated and  
 76 the bank is relying primarily upon each such maker for the payment of  
 77 such obligations, the limitations of this section as to the obligations of  
 78 each maker shall be the sole applicable loan limitation; and provided  
 79 such certification shall be in writing and shall be retained as part of the  
 80 records of such bank.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2022	36a-262(a)
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**Statement of Legislative Commissioners:**

In Section 1(a), "(3)" was changed to "(C)" for consistency of subparagraph designators.

**BA**      *Joint Favorable Subst. -LCO*